HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, May 1, 2013
83rd Legislature, Number 63
The House convenes at 10 a.m.
Part One

Thirty-six bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills on the Constitutional Amendments Calendar and General State Calendar analyzed in Part One of today's *Daily Floor Report* are listed on the following page.

Two postponed bills, HB 590 by Naishtat and HB 459 by Guillen, are on the supplemental calendar for second-reading consideration today. The analyses are available on the HRO website at http://www.hro.house.state.tx.us/BillAnalysis.aspx.

The House will consider a Congratulatory and Memorial Calendar today.

Bill Callegari
Chairman
83(R) – 63

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, May 1, 2013
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Part One

SUBJECT: Repealing provision authorizing hospital district in Hidalgo County

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 7 ayes — Coleman, Farias, M. González, Hunter, Kolkhorst, Krause, Simpson

0 nays

2 absent — Hernandez Luna, Stickland

WITNESSES: For — Donald Lee, Texas Conference of Urban Counties; (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Paul Bollinger, Doctors Hospital at Renaissance; Don McBeath, Texas Organization of Rural & Community Hospitals; Terry Simpson, San Patricio County)

Against — None

BACKGROUND: Tex. Const., Art. 9, sec. 7 authorizes the creation of a hospital district in Hidalgo County. The constitution authorizes a maximum tax rate of 10 cents per $100 valuation of taxable property for the hospital district.

DIGEST: HJR 147 would repeal Texas Const., Art. 9, sec. 7.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment repealing Section 7, Article IX, Texas Constitution, which relates to the creation of a hospital district in Hidalgo County."

SUPPORTERS SAY: HJR 147 would allow Hidalgo County to rid itself of a more than 50-year-old provision in the state's constitution that limits its ability to create and operate a sustainable hospital district. Hidalgo is the largest county in Texas without a hospital district and the only one in the state required to have a maximum tax rate of 10 cents per $100 property valuation for a hospital district. Although this low tax rate might have seemed sensible when it was passed by the 56th Legislature in 1959, it hampers the ability of Hidalgo County to form a sorely needed hospital district that would be solvent.

Other Texas counties have shown the ability to operate successful hospital districts with tax rates that range on average between 20 and 40 cents per $100 property valuation. HJR 147 would allow Hidalgo County, with voter approval, to have district that could serve a community with a high rate of uninsured residents, boost affordable health care, and strengthen the region's ability to draw federal funds to pay for emergency care for the poor. A community that can offer health care to uninsured residents before they reach the emergency room has an important responsibility to property taxpayers to keep health care costs low.

HJR 147 would afford Hidalgo County the same taxing rate range that other counties enjoy for their hospital districts. If HJR 147 were passed and approved by voters, the formation of a hospital district in Hidalgo County and the district's tax rate still would require approval from the county's voters during an election.

OPPONENTS SAY:

HJR 147 likely would lead to an increase in taxes for Hidalgo County property owners. The new tax rate for a hospital district in Hidalgo County could be set as high as 75 cents per $100 property valuation.

NOTES:

The companion joint resolution, SJR 54 by Hinojosa, was reported favorably by the Senate Intergovernmental Relations Committee on April 29 and placed on the Senate intent calendar.

SUBJECT: Cap on general revenue dedicated funds available for budget certification

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 26 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, S. Davis, Dukes, Giddings, Gonzales, Howard, Hughes, S. King, Longoria, Márquez, Muñoz, Orr, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

1 absent — McClendon

WITNESSES: For — (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition; Stephen Minick, Texas Association of Business; Joey Park, Coastal Conservation Association Texas and Texas Wildlife Association; Cory Pomeroy, Texas Oil and Gas Association; Mireya Zapata, National Multiple Sclerosis Society)

Against — None

On — Gk Sprinkle, Texas Ambulance Association; (*Registered, but did not testify:* Jeremiah Jarrell, Legislative Budget Board

BACKGROUND: General revenue dedicated funds are funds collected for a specific purpose designated in state law. The comptroller estimated general revenue dedicated account balances to be $4.8 billion at the beginning of fiscal 2014-15.

The Texas Constitution limits state spending to the amount of revenue the comptroller estimates will be available during the two-year budget period (Art. 3, sec. 49a). The comptroller must certify that the state will have enough revenue to pay for the approved spending.

In 1991, during "funds consolidation," the Legislature began phasing out restrictions on many dedicated revenue funds and changing the methods of fund accounting. Before this change, most dedicated revenue was held in separate "special funds" outside of general revenue, which limited the amount of general revenue available for general purpose spending.

Funds consolidation changes also included annual one-day accounting "sweeps." Government Code, sec. 403.095(b) requires that on August 31, 2013, cash balances in dedicated revenue accounts that exceed amounts appropriated or encumbered be transferred into general revenue and counted as available general revenue by the comptroller. The availability of dedicated revenues for general governmental purposes is scheduled to expire September 1, 2013.

Under Government Code, sec. 403.095 the comptroller includes in the estimate of funds available for general-purpose spending the amounts in general revenue-dedicated accounts expected to exceed appropriations from those accounts at the end of the current biennium.

DIGEST:

HB 6 would place a cap of $4.8 billion on the amount of general revenue dedicated funds that could be considered for certification of the budget.

The bill also would abolish funds and accounts created or dedicated by an act of the 83rd Legislature on the later of August 31, 2013, or the date of when the act creating the fund or account took effect. Excluded from abolishment would be funds that:

- were enacted before the 83rd Legislature convened to comply with requirements of state constitutional or federal law;
- remained exempt from abolishment during funds consolidation in 1991;
- increases in fees or in other dedicated revenue; and
- increases in fees required to be deposited in a fund covered by the bill.

Federal funds, trust funds, bond funds, and constitutional funds also would be exluded.

HB 6 would prevail over any other act of the 83rd Legislature that attempted to create a special fund or account, dedicate revenue to a particular purpose, or modify provisions governing the use of dedicated revenue. Revenue dedicated by another bill enacted by the 83rd Legislature would be deposited as non-dedicated general revenue.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect on the 91st day after the last day of the legislative session.

SUPPORTERS SAY:

HB 6 would take an important step toward reining in the state's reliance on general revenue dedicated (GRD) funds to certify the budget and would continue the process of fund consolidation and preservation begun by recent Legislatures.

Cap on GRD funds for certification. HB 6 would get the state onto the path of reducing reliance on GRD funds. Placing a cap on the amount of GRD funds that the comptroller could count toward certification of the budget would halt the growth of this practice and give the Legislature time to weigh further measures to reduce reliance on these funds. Adopting a cap also would affirm that the Legislature recognized the importance of spending funds on the purposes for which they were collected and was setting a precedent to make this a priority in future sessions.

The Legislature has been using dedicated funds for certification purposes for two decades. Unfortunately, it is impossible to end this practice in one session. The comptroller recently estimated that there would be about $4.8 billion available in GRD funds for fiscal 2014-15. Eliminating this balance through fee cuts, refunds, appropriations, and other measures will take time. HB 6 and a related bill, HB 7 by Darby, as well as measures in the House-passed version of the proposed fiscal 2014-15 budget, would together take important steps toward reducing the state's long-term reliance on unspent GRD funds. Although there are significant unspent balances of GRD, it is important to note that these funds are never spent for a unintended purpose.

Adopting provisions that commit future legislatures to a specific policy, like a ratchet-down rule for GRD that can be counted toward certification, could prevent future legislatures from doing what they all must do — craft measured solutions to the pressing problems of their time. There are many variables that affect the appropriations process each session. Every legislature has a unique challenge of funding pressing needs with limited resources. Restricting the ability of future legislatures to tailor laws to unique circumstances would invite unintended consequences.

Continuation of funds consolidation. HB 6 includes provisions that each Legislature has adopted since the process of fund consolidation. Since 1991, the Legislature has been phasing out restrictions on many dedicated revenue funds and changing the methods of fund accounting. In the past,

most dedicated revenue was held in separate special funds outside of general revenue, limiting the amount of general revenue available for general purpose spending. HB 6 would ensure that laws enacted by the 82nd Legislature did not run afoul of this policy.

Cash balances in dedicated revenue accounts that exceeded amounts appropriated or encumbered would be "swept" or transferred into general revenue and counted as available general revenue by the comptroller for purposes of budget certification. HB 6 would continue this practice so that more general revenue could be made available for state priorities such as education, health care, and public safety. The availability of dedicated revenues for general governmental purposes is scheduled to expire September 1, 2013, and the bill would extend this authority for another two years.

OPPONENTS SAY:

While HB 6 would be a step in the right direction, it would not go far enough in addressing the state's reliance on using GRD fund balances for budget certification.

Cap on GRD funds for certification. Under-appropriating from GRD funds to preserve enough unspent revenue to certify the budget amounts to raising fee revenue for one purpose and diverting the funds to another purpose. Honesty and transparency in budgeting call for spending funds on the purpose for which they were collected. If the state is not willing to spend the account balances, then it should be willing to refund the money to taxpayers.

One way the Legislature could eliminate diversions of GRD from their intended purposes would be to abolish the dedication of revenue and GRD accounts altogether and then sweep the balances of those funds into the General Revenue Fund. The would result in a gain in to general revenue and the elimination of all restrictions on previously dedicated revenue.

Another option for reducing reliance on GRD accounts for certification would be to enact a cap that would then decrease, or ratchet down, each biennium until it reached a level the Legislature deemed appropriate. This would have the effect of forcing future legislatures to confront GRD diversions and either find alternative sources of funding or scale back spending, or both. Under this scenario, the Legislature also could eventually ratchet the cap down to $0 and include an expiration of the authority to count dedicated account balances toward certification. This

would completely remove any incentive to retain dedicated fund balances.

NOTES:

The Legislative Budget Board issued a publication in January 2013, that includes recommendations on measures the Legislature could take to reduce reliance on general revenue dedicated accounts.

A related bill revising provisions governing GRD funds, CSHB 7 by Darby, is also scheduled for second-reading consideration today.

The Senate companion, SB 1653 by Williams, has been referred to the Senate Finance Committee.

SUBJECT: Adding salvia to Penalty Group 3 of the Texas Controlled Substances Act

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Carter, Canales, Leach, Moody

2 nays — Schaefer, Toth

1 absent — Hughes

1 present, not voting — Burnam

WITNESSES: For — (*Registered, but did not testify:* Jessica Anderson, Houston Police Department; Donald Baker, City of Austin Police Department; John Chancellor, Texas Police Chiefs Association; Lon Craft, TMPA, Texas Municipal Police Association; Daniel Earnest, San Antonio Police Officers Association; JoAn Felton, Mclennan County Medical Society; Marisa Finley, Scott & White Center for Healthcare Policy; Bradford Holland, Texas Medical Association & McLennan County Medical Society; James Jones, San Antonio Police Department; Anne Olson, Texas Baptist Christian Life Commission; Gary Tittle, Dallas Police Department)

Against — (*Registered, but did not testify:* Matt Simpson, ACLU of Texas; Teresa Beckmeyer

On — (*Registered, but did not testify:* Pat Johnson, Department of Public Safety)

BACKGROUND: Texas regulates controlled substances through the Texas Controlled Substances Act and establishes criminal penalties for violations by including the drugs in different penalty groups. Knowingly or intentionally possessing a Penalty Group 3 substance, unless it was obtained with a prescription, carries the following penalties:

- class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000), if the amount of the controlled substance possessed is less than 28 grams;
- felony of the third degree (two to 10 years in prison and an optional

fine of up to $10,000), if the amount of the controlled substance possessed is 28 grams to less than 200 grams;

- felony of the second degree (two to 20 years in prison and an optional fine of up to $10,000), if the amount of the controlled substance possessed is 200 grams to less than 400 grams; and
- imprisonment in the Texas Department of Criminal Justice for life or for a term of five to 99 years, and a fine up to $50,000, if the amount of the controlled substance possessed is 400 grams or more.

DIGEST:

HB 124 would add salvia divinorum, including its seeds, compounds, derivatives and extracts, to Penalty Group 3 of the Texas Controlled Substances Act.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Salvia divinorum is a strong, naturally occurring plant hallucinogen that is extremely dangerous and should be illegal. Twenty states ban salvia divinorum, a few others ban it for minors, and about 50 Texas cities have some ordinance against the drug.

Teenagers and others use salvia because it creates a legal "short high" and can be purchased in head shops and on the Internet. Common effects of salvia are spatial disorientation, incapacitation, visions, experiences of alternate realities, and lack of pain sensation. The effects can begin within 20 to 60 seconds of smoking the drug and can last from a few minutes to an hour.

In this period of altered reality, people could endanger themselves or others, and some believe salvia can be associated with the onset of psychiatric illness. In fact, even proponents of salvia use recommend a "sober sitter" to prevent the user from doing anything dangerous that could result in bodily harm or property damage. A frightening aspect of this drug is that people cannot feel pain when they are under its influence and may not even know if they had a broken bone or other serious injury.

Placing salvia in Penalty Group 3 of the Controlled Substances Act would place it among other drugs that pose similar dangers. It would be in line with most other states that have penalized salvia at the high misdemeanor/low felony level. Most importantly, this would help protect Texans by getting it off the retail shelves.

The Controlled Substances Act already provides penalties for manufacturing and distributing substances in the act, and this framework should be used for salvia. Enacting a unique penalty structure for users and dealers of salvia would thwart the goal of having the act apply uniformly to all drugs in a penalty group. Using the current uniform structure for penalties gives the public and law enforcement more certainty and predictability.

Although education and treatment would be important components of responding to salvia use, it is important to criminalize it to prevent Texans from using this very dangerous drug in the first place.

OPPONENTS SAY:

This bill unnecessarily would impose government regulation on the sale and use of salvia divinorum, even though there is little or no evidence that it represents a public health or safety problem. Salvia's effects do not rise to the level of other illegal drugs, and the penalty imposed by HB 124 would be too harsh.

Banning salvia would be an overreach of government authority, especially for a natural plant associated with religious practices. If Texas wants to address the issue of salvia, it should impose penalties on sellers and manufacturers, not those who possess the plant.

OTHER OPPONENTS SAY:

HB 124 should impose the lowest criminal penalty for possession, a class C misdemeanor, with higher penalties for dealers.

A better approach to address an increasing use of salvia, especially among teenagers, would be education, counseling, and treatment, not potential jail time.

NOTES:

In 2011, an identical bill, HB 470 by Anderson, was approved by the House and died in the Senate.

SUBJECT: Exempting from the franchise tax web hosting for out-of-state customers

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Ritter

0 nays

1 absent — Martinez Fischer

1 present not voting — Strama

WITNESSES: For — Chris Rosas, Rackspace; (*Registered, but did not testify:* George Christian, Texas Taxpayers and Research Association; Robert Flores, Texas Association of Mexican-American Chambers of Commerce; John Montford, Rackspace Hosting; Patricia Morse, SoftLayer Technologies, Inc.; Drew Scheberle, Greater Austin Chamber of Commerce; Carlton Schwab, Texas Economic Development Council; David Kaplan)

Against — (*Registered, but did not testify:* Ted Melina Raab, Texas AFT)

On — (*Registered, but did not testify:* Teresa Bostick and Ed Warren, Texas Comptroller of Public Accounts)

BACKGROUND: The Texas franchise tax, or "margins" tax, applies to each taxable entity that does business or is organized in the state. The tax is calculated as either 1 percent or 0.5 percent of taxable margin.

In general, a taxable entity's margin is apportioned to the state to determine the amount of tax imposed by multiplying the margin by the fraction of the entity's total receipts that are from doing business in the state.

Tax Code sec. 151.108 defines "internet hosting" as providing access to computer services using property that is owned or leased and managed by a provider on which a user may store or process the user's own data or use software that is owned, licensed, or leased by the user or provider. The term does not include telecommunications services.

DIGEST:

HB 416 would provide that a receipt from Internet hosting described by Tax Code, sec. 151.108 was a receipt from business done in the state only if the customer was located in the state.

The bill would take effect September 1, 2013, and would apply to a franchise tax report due on or after that date.

SUPPORTERS SAY:

HB 416 would put Texas in a more competitive position to recruit businesses in the web hosting industry. The bill would address the limits of current tax franchise tax law to fairly tax new and emerging industries.

Web hosting businesses, such as Rackspace, offer a range of cloud computing services to an international customer base. Cloud computing makes use of large, monitored servers housed in facilities all over the world. Because server storage facilities are geographically unconstrained, web hosting businesses carefully weigh state tax structures when deciding where to locate facilities.

The unique nature of Texas' franchise tax yields a higher tax burden on web hosting businesses than they encounter in many other states. In general, web hosting businesses have relatively low costs for compensation or cost of goods sold, which are the primary deductions available to businesses under the franchise tax. Instead, the greatest expenses of web hosting businesses are capital investments in facilities and servers, and research and development, which are not deductible under the franchise tax.

In addition, under the franchise tax, the state's apportionment formula, which determines the portion of a company's receipts that are from business done in the state and therefore subject to tax, generally returns a high percentage of taxable receipts for web hosting companies in Texas. This is because receipts from out-of-state customers paying for web storage in Texas are treated as business done in this state for the purposes of the apportionment formula. As such, web hosting businesses have a higher percentage of their receipts subject to tax than other businesses with large out-of-state customer bases.

Any fiscal impact of HB 416 would be more than offset by increased investment from web hosting companies in the state. If current law were to remain in effect, this rapidly growing industry will expand in other states at the expense of Texas. In that case, the state will generate from the

industry little revenue or investment of any kind, an ultimate loss for taxpayers.

OPPONENTS SAY:

HB 416 would have an indirect impact on general revenue funds by reducing franchise tax funds flowing to the Property Tax Relief Fund, which was established by the Legislature in 2006 to offset reductions of school property taxes. It would reduce taxes collected for public schools by about $5 million for fiscal 2014-15 and beyond, according to the Legislative Budget Board. Because revenue in the Property Tax Relief Fund is dedicated to public education, any reduction of revenue in the fund must be offset with general revenue funds.

The Legislature should not contemplate measures that reduce funds available for public education without first restoring the deep cuts it made to schools in 2011. Until these cuts are restored, any proposal to reduce revenue coming in to the state that is not absolutely necessary should be tabled.

A growing number of companies offering cloud computing services and products likely would fall under the definition of "web hosting" in the bill. By removing transactions involving out-of-state customers from the franchise tax apportionment calculation, the state could be setting itself up for a significant loss of future revenue that may not be accounted for in current fiscal projections.

OTHER OPPONENTS SAY:

While the intent of HB 416 may have merit, it would continue the state's piecemeal approach to the seemingly endless issues that plague the franchise tax. Under the current tax, many businesses are taxed on expenses that should be exempt, others pay unequal rates for similar activities, and still others have to pay taxes for years where they actually report a net loss of income. The Legislature should embrace comprehensive reform or elimination of the deeply flawed franchise tax and move away from the ad hoc approach to fixing its various problems.

NOTES:

The Legislative Budget Board estimates the bill would result in a revenue loss to the Property Tax Relief Fund of $5 million for fiscal 2014-15. Any loss to that fund must be made up with an equal amount of general revenue to fund the Foundation School Program.

The companion bill, SB 1518 by Van de Putte, has been referred to the Senate Finance Subcommittee on Fiscal Matters.

SUBJECT: Establishing an urban land bank demonstration program in San Antonio

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Alvarado, Elkins, Leach, J. Rodriguez, Sanford

0 nays

2 absent — Dutton, Anchia

WITNESSES: For — Tim Alcott, San Antonio Housing Authority; Ramon Flores, Westside Development Corporation; Leo Gomez, Spurs Sports & Entertainment; Jackie Gorman, San Antonio for Growth on the Eastside; Lori Houston, City of San Antonio; Ivy Taylor, City of San Antonio - San Antonio City Council; (*Registered, but did not testify:* Gerald Cichon, Housing Authority of the City of El Paso; Melanie Villalobos, San Antonio Housing Authority)

Against — None

BACKGROUND: In 2003, the 78th Legislature enacted HB 2801 by Giddings, which established the Urban Land Bank Demonstration Program Act. A municipality to which the act applies may permit the private sale of tax-foreclosed property to an urban land bank. In turn, property used for land bank purposes may be developed into affordable housing. The act outlines requirements for the city, participating developers, and other entities to follow in the acquisition and sale of such properties.

Under Local Government Code, sec. 379C.002, the act applies to a city with a population of 1.18 million or more located predominantly in a county with a total area of less than 1,000 square miles (Dallas).

DIGEST: CSHB 3447 would amend Local Government Code, sec. 379C.002 to apply the Urban Land Bank Demonstration Program Act to a city with a population of at least 1.18 million located predominantly in a county with a total land area of less than 1,300 square miles (Dallas and San Antonio).

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 3447 would provide the City of San Antonio with an important redevelopment tool that would promote the restoration of abandoned and unproductive properties back onto the tax rolls, yield more affordable housing, and encourage commercial growth in aging or struggling neighborhoods, all of which are key to having a sustainable community.

Allowing San Antonio to use the same urban land bank demonstration program that has worked in Dallas would hasten redevelopment and investment in many neighborhoods. Vacant and abandoned land often discourages property ownership, depresses property values, creates health hazards, and attracts crime. The program would complement the city's commitment to rehabilitating areas through its reinvestment and infill policy.

Returning abandoned and foreclosed properties to the tax rolls generates revenue for local governments so they can provide adequate services. This kind of restoration provided by the bill also would reduce the tax burden on the pool of responsible property owners. The program targets properties that have been unproductive for a long period. It is often the last resort to reinvigorate a tract of land that has failed to lure any attention from the market.

CSHB 3447 also would encourage the kind of residential development that yields affordable housing. And it would help address the migration away from the city's center of residents who have settled in suburban communities. According to a recent study, about 13 percent of homes were vacant in San Antonio's core neighborhoods in 2009, while only 8 percent of homes countywide were vacant.

Transforming vacant lots and abandoned homes into vibrant neighborhoods also would attract investment from merchants, eateries and other commercial ventures eager to serve sustainable communities. This kind of commercial activity generates jobs and revenue.

OPPONENTS SAY:

CSHB 3447 would grant a government entity too much control over private property for the kind of program that lacks accountability and discounts competition from the free market.

Because land banks are directed by people appointed by a local government, voters would have little say in the direction of the program. Such a panel could make decisions without considering the interests of

local voters, and conflicts of interest could affect the determination of which properties were taken in and to whom they were sold.

The maintenance, rehabilitation, and policing of such properties also would become an additional burden that was unfair to local taxpayers.

SUBJECT: Providing incentives to Texas Rising Star child-care providers

COMMITTEE: Human Services —committee substitute recommended

VOTE: 7 ayes — Raymond, N. Gonzalez, Fallon, Klick, Rose, Sanford, Scott Turner

0 nays

2 absent — Naishtat, Zerwas

WITNESSES: For — Andrea Brauer, Texans Care for Children; Tere Holmes Texas Licensed Child Care Association; Kim Kofron and Jackie Taylor, Texas Association for the Education of Young Children; Marlene Lobberecht, League of Women Voters of Texas; Carol Shattuck, Collaborative for Children; Pat Smith; Katherine Von Haefen, United Way of Greater Houston and One Voice Texas; (*Registering, but not testifying:* Katherine Barillas, One Voice Texas; Alison Bentley and Hannah Berle, United Way for Greater Austin; Melody Chatelle, United Ways of Texas; James Finck, Texas Alliance of YMCAs; Aletha Huston; Stephanie Mace, United Way of Metropolitan Dallas; Diana Martinez, TexProtects and The Texas Association for the Protection of Children; Susan Milam, National Association of Social Workers, Texas Chapter; Rhonda Paver; Bill Pewitt, Kids R Kids Child Care; Brenda Strama; Emily Underwood; Tamara Vannoy, Texas Afterschool Association)

Against — None

On — (*Registered, but did not testify:* Laurie Biscoe and Reagan Miller, Texas Workforce Commission)

BACKGROUND: A Texas Rising Star (TRS) provider is a child-care provider who has an agreement with a local Workforce Development Board's child-care contractor to serve Texas Workforce Commission-subsidized children and voluntarily meets requirements that exceed the state's Minimum Child Care Licensing Standards.

Under Title 40, Texas Administrative Code, sec. 809.15(b), Texas Rising Star Provider criteria are pursuant to Government Code, sec. 2308.315,

which requires each local workforce development board to establish graduated reimbursement rates for child care based on the Texas Workforce Commission's designated vendor program.

DIGEST:

CSHB 376 would set reimbursement incentives for the Texas Workforce Commission's Texas Rising Star child-care program and create a work group to recommend revisions to rules governing the program.

Reimbursement rates. CSHB 376 would require local workforce development boards to establish graduated reimbursement rates for child care based on the commission's Texas Rising Star program. The minimum reimbursement rate for a Texas Rising Star program provider would be greater than the maximum rate established for a provider outside the program.

Specifically, the reimbursement rate would be:

- at least 5 percent higher for a provider with a two-star rating;
- at least 7 percent higher for a provider with a three-star rating;
- at least 9 percent higher for a provider with a four-star rating.

The new reimbursement rates would take effect after the Texas Workforce Commission adopted any rule revisions made by the Texas Rising Star program review work group.

Texas Rising Star program review work group. CSHB 376 would establish the Texas Rising Star program review work group to propose revisions to the commission's rules governing the program. The commission's executive director would appoint members to the work group as defined by the bill by September 1, 2013. The membership of the workgroup would vote to elect the group's presiding officer.

The group would meet by November 1, 2013, and would submit rule revision recommendations to the commission by May 1, 2014. The commission would have to propose rules that incorporated the proposed revisions submitted by the work group by September 1, 2014.

Administration of the Texas Rising Star program. The bill would add the Texas Rising Star program to statute as a voluntary, quality-based child-care rating system of child-care providers participating in the commission's subsidized child-care program. The commission would be required to adopt rules to administer the Texas Rising Star program, with

guidelines for rating a child-care provider who provides care to a child younger than 13 years old, including infants and toddlers, enrolled in the subsidized program.

Funding. The Texas Workforce Commission would use funds from the federal child care and development block grant for provider reimbursement; assistance to providers in the process of obtaining a Texas Rising Star program rating; professional development for child-care providers, directors, and employees; educational materials for parents and children; and funding for each local workforce development board to provide technical assistance for the program, including:

- a child development specialist to serve as an evaluator of the provider during the certification process;
- a mentor or coach to provide developmentally appropriate resources to a program provider;
- information to parents about selecting quality child care;
- parenting education information, including information about available parenting classes.

Each board would use at least 2 percent of the board's yearly allocation from the commission for quality child-care initiatives and report annually to the commission on how they used the money. A board also could use money from other public or private sources for these initiatives, including technical assistance.

Public information. Each board would have to provide information on quality child-care indicators to each licensed or registered child-care provider in the area and could determine how to provide this information. Each board would have to post a list of local designated child-care providers with a child-care indicator as well as a list of local parenting classes in a prominent place on the home page of the board's website.

Child-care providers receiving funding or reimbursement from a board would have to post their certification or accreditation at the entrance of the facility.

SUPPORTERS SAY:

CSHB 376 would improve the quality of child care in Texas, reduce the school readiness gap between high-income and low-income children, and increase the number of high-quality child-care providers available.

Under the current reimbursement system, many child-care providers have to choose between providing accredited, high-quality care and being part of the designated vendor system. Recruiting well trained staff and providing professional development training to ensure the best quality of child care often costs more than the reimbursement the Texas Rising Star program currently provides. This leaves Texas children with fewer high-quality child-care options and prevents low-income children from having the most developmentally appropriate care that would best prepare them to succeed in school.

CSHB 376 would improve the quality of child-care by increasing reimbursement rates for providers who reached national standards of quality. Incentivizing quality would ultimately increase the number of high-quality providers available to low-income children and would increase the number of Texas children who arrived at kindergarten developmentally ready to succeed. Studies show that states receive a high return on investment in high-quality child-care, including fewer children who become involved in crime and more children graduating from high school and college.

While the program would receive funds from the federal child care and development block grant, the reallocation of funds toward child-care quality would not take away funding from any child who already received a subsidy. No state funds would be allocated for the bill, only existing federal block grant money. Ultimately, the state cannot afford to operate a system that does not incentivize quality. CSHB 376 would make sure that the system provided the highest quality of care to Texas children.

OPPONENTS SAY:

CSHB 376 would divert funding from child-care subsidies for low-income families to pay for changes to the program. The bill could increase wait-lists for subsidized child care, meaning that fewer Texas families could afford any type of child care for their children.

NOTES:

The companion bill, SB 1588 by Zaffirini, was referred to the Senate's Health and Human Services Committee on March 19.

The committee substitute differs from the bill as filed by adding a provision setting the start date for reimbursement changes as the date the Texas Workforce Commission adopts the Texas Rising Star program review work group’s rules; further defining where each board would post the program information online; adding an additional Texas Rising Star

program provider as a member of the Texas Rising Star program review work group; requiring at least one member to be a provider who provides child-care in their own home; removing a requirement that the work group consider requirements regarding staff-to-child ratios and group sizes in making its recommendations.

SUBJECT: Territory included in a county election precinct

COMMITTEE: Elections — favorable, without amendment

VOTE: 7 ayes — Morrison, Miles, Johnson, Klick, R. Miller, Simmons, Wu

0 nays

WITNESSES: For — Ed Johnson, Harris County Clerks Office; (*Registered, but did not testify:* Seth Mitchell, Bexar County Elections Administrator; Lannie Noble, Texas Association of Elections Administrators, Wise County Elections; Toni Pippins-Poole, Dallas County; Steve Raborn, Tarrant County Elections; B R "Skipper" Wallace, Republican County Chairs Association)

Against — None

On — (*Registered, but did not testify:* Keith Ingram, Texas Secretary of State, Elections Division)

BACKGROUND: Election Code, ch. 42 governs creation and regulation of election precincts. Under sec. 42.005, a county election precinct may not contain territory from more than one of each of the following types of territorial units:

- a commissioners precinct;
- a justice precinct;
- a congressional district;
- a state representative district;
- a state senatorial district;
- a ward in a city with a population of 10,000 or more; or
- a State Board of Education District.

"Ward" is defined as a territorial unit of a city from which a member of the city's governing body is elected by only the voters residing in that unit. A county election precinct is not required to comply with the city ward boundaries if the commissioners court determines compliance is impracticable because of a federal court order affecting elections and if the voter registrar fulfills requirements for providing lists of registered voters

to election precincts affected by such court order.

Election Code, sec. 42.0051(b) allows for county election precincts to be combined in a county with a population of 250,000 or more if boundary changes after a redistricting plan result in county election precincts with 500 or more but fewer than 750 registered voters.

DIGEST:

HB 2503 would remove justice precincts, wards, and State Board of Education districts from the list of territorial units with which county election precinct boundaries had to align. The bill would remove rules and references related to these territorial units from other parts of the Election Code.

The bill would change the criterion for combining precincts in a county with a population of 250,000 or more to allow for combining precincts if a precinct had fewer than 2,500 registered voters.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 2503 would improve voter access to polling locations and increase the flexibility of election officials to combine precincts.

The prohibition against election precincts containing territory from more than one type of territorial unit is onerous and creates logistical problems. For example, in Harris County there are justice districts and board of education districts that do not align with any other districts, which causes problems when trying to set boundaries. The current requirements sometimes create precincts that contain purely industrial or residential zones. This complicates the process of finding polling locations within each precinct, particularly polling locations that comply with the Americans with Disabilities Act. Sometimes this creates a situation where voters must travel to a distant polling location when there is a closer, more familiar one in a neighboring precinct that would be available under more sensible boundary regulations.

The bill would raise the population limit only by the amount necessary to improve efficiency and access to polls. A population cutoff of 2,500 would reduce the number of precincts in which there were no available appropriate polling locations, easing the burden on election officials and

allowing voters to access closer and more convenient polling locations.

OPPONENTS SAY:

HB 2503 would give election officials too much leeway to combine precincts. The current population limit of 750 (in counties with 250,000 or more people) is set low in order to preserve a high bar and allow for combining of election precincts only when absolutely necessary. More than tripling that limit could result in unnecessarily combined precincts, which would distance people from their local polling locations, force them to drive or commute longer distances, and increase the burden on polling locations to deal with larger populations and longer lines.

NOTES:

A similar bill, HB 1164 by E. Thompson, would remove only wards from the list of territorial units and remove references in the code to that provision. It was passed by the House on the local and consent calendar on April 18 and referred to the Senate Committee on State Affairs.

SUBJECT: Allowing administrative costs for supplemental environmental projects

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Harless, Márquez, Lewis, Reynolds, E. Thompson, C. Turner, Villalba

0 nays

2 absent — Isaac, Kacal

WITNESSES: For — Ken Awtrey, Resource Conservation and Development Council; David Rosse, Rio Bravo Resource Conservation and Development Council and Kleberg County; (*Registered, but did not testify*: Smith Covey, Resource Conservation and Development Council; Bill Oswald, Koch Companies)

Against — None

On — (*Registered, but did not testify*: Kathleen Decker, Texas Commission on Environmental Quality)

BACKGROUND: The Texas Commission on Environmental Quality (TCEQ) administers a Supplemental Environmental Projects (SEPs) program. SEPs are environmentally beneficial projects that a respondent agrees to undertake in settlement of an enforcement action but is not otherwise legally required to perform. Often respondents support environmental projects performed by third parties, such as cities or environmental nonprofit organizations, by providing funding, with TCEQ approval, directly to the third party.

DIGEST: CSHB 2290 would allow TCEQ, in agreeing to a SEP proposal, to permit a local government or a 501(c)(3) nonprofit organization to use up to 10 percent of the direct cost of an SEP project for administrative costs, including overhead, personnel salary and fringe benefits, and travel and per diem expenses.

CSHB 2290 would allow the bill's provisions to be applied to SEP funds received by a third party implementing a SEP on, before, or after the

effective date of the act.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2290 would provide much-needed assistance to organizations trying to improve and enhance the environment but who may lack the funds to pay for administrative overhead. TCEQ's SEP program generally disallows all costs except direct costs associated with an environmentally beneficial project. For example, an organization that is undertaking an air quality monitoring project could get costs approved for actual equipment but the agency may not approve costs associated with salaries and fringe benefits and would not approve payment of administrative expenses and overhead. Similarly, an organization that is planning and implementing the restoration of a wetland could have costs approved for wetland plants, but not the cost of staff needed to perform the restoration or the overhead supporting the restoration effort. Organizations often have a hard time raising the funds for overhead costs from individual donations and private foundations.

TCEQ audits third-party administrators of SEP funding, requiring quarterly financial and progress reports. TCEQ's SEP oversight is adequate to oversee the use of SEP funds for overhead and administrative expenses.

OPPONENTS SAY:

Funds for SEP projects are paid to third parties in lieu of paying environmental fines, and therefore are comprised of funds that would otherwise go into general revenue. The TCEQ must carefully monitor the funds' use.

CSHB 2290 would not clearly define what was allowable in those cost categories. Overhead and administrative costs can be defined as many things, and attributing overhead costs to any project is often hard for auditors to track. Institutions calculate overhead and administrative costs in widely different ways, resulting in some organizations claiming overhead costs of less 10 percent of a project's costs, while some organizations have overhead costs of more than 40 percent.

CSHB 2290 should link terms such as administrative costs and overhead costs to those already provided in state law under the state's Uniform

Grant Management Standards or some other well-known accounting standard, such as federal auditing circulars. Doing so would provide guidance to TCEQ and to SEP third-party recipients, plus provide auditors a standard to hold third parties accountable when they received funds for administrative or overhead purposes.

NOTES:

The committee substitute differs from the introduced version by adding 501 (c) (3) nonprofit organizations to the bill. The committee substitute removes references to the Texas Association of Resource and Conservation and Development Areas Inc.

SUBJECT: Notice of natural gas utility rate increases

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Menéndez, Oliveira

0 nays

3 absent — Hilderbran, Smithee, Sylvester Turner

WITNESSES: For — Chris Felan, Atmos Energy; (*Registered, but did not testify*: Anne Billingsley, ONEOK; Thure Cannon, Texas Pipeline Association; Jim Grace, CenterPoint Energy, Inc.)

Against — (*Registered, but did not testify*: Ashley Chadwick, Freedom of Information Foundation of Texas)

On — (*Registered, but did not testify*: Bill Geise, Railroad Commission of Texas)

BACKGROUND: Utilities Code, sec. 104.103 describes the notification requirements for natural gas utilities proposing rate increases. Generally, gas utilities are required to publish, in a conspicuous form, notice of the proposed rate increase once each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed increase. The gas utility must also provide notice to other affected parties as required by Railroad Commission rules.

In areas outside affected cities, or in a city with a population less than 2,500, the gas utility instead may provide notice to the customer by prepaid mail or include conspicuous notice in the bill of each directly affected customer.

DIGEST: HB 1488 would removes the population bracket in existing law that limits alternatives to newspaper notification of proposed rate increases to cities of less than 2,500, and areas outside affected cities.

Instead of publishing newspaper notice or notifying customers by mail or

in the customer's bill, gas utilities would be allowed to send notice of proposed rate increases by e-mail to each directly affected customer if that address was available to the utility.

HB 1488 would take effect September 1, 2013 and would apply to a notice of a proposed rate increases provided on or after that date.

SUPPORTERS SAY:

HB 1488 would improve the ability of a gas utility to notify customers of a proposed rate increases. Gas utilities would be given the option to provide notice to any community, regardless of size, in a form other than printing an ad in a local newspaper over four successive weeks. Gas utilities could opt to provide notice directly to the customers by letter, or by e-mail if the company had the customer's e-mail address. The practice of notifying customers directly by mail is already common in communities with populations less than 2,500 where it is allowed under current law. Direct notification of customers has been successful, and HB 1488 would allow gas utilities to build upon an already existing, successful practice using modern methods of communication.

The change in notice requirements will benefit ratepayers by ensuring that a wider number of customers were reached. Newspapers have a declining readership, and not all customers subscribe to newspapers, much less read public notices. Publication of notices in newspapers remains an expensive and outdated method of communication. Most general readers do not peruse the notices, if they read a print newspaper at all.

Because the cost of notifying ratepayers is ultimately charged back to the customer as part of the recoverable expense, any money saved on notice requirements is ultimately less money that the ratepayer has to pay. One gas utility serving 400 communities reports that HB 1488 could save it, and ultimately the ratepayer, approximately $700,000 per year in notification costs.

Customers who do not provide e-mail addresses to the gas company or participate in electronic billing would still receive their notice by mail, ensuring that those individuals who did not own computers were still notified. HB 1488 would modernizes notification, and there is little chance in today's age of e-mail, social media, neighborhood and community list serves, and advocacy organizations with e-mail notification systems, that a proposed rate increase would go unnoticed.

OPPONENTS SAY:

Publication of notice in newspapers of general circulation remains a valuable tool to inform citizens of proposed rate increases. Eliminating newspaper notice requirements could effectively leave in the dark those who rely on physical newspapers to get information about rate increases. Many people do not have access to online sources and could be placed at a disadvantage by a change in policy that eliminated the newspaper notice requirement. Further, many of the larger papers place postings both in print and online, where they are able to achieve maximum exposure.

If the utility did not send a written notice, a customer could remain uninformed about the proposed rate increase. Notices from the gas company provided by e-mail could be weeded out by spam filters or sent to an old e-mail address, preventing the customer from receiving proper notification.

The bill could disproportionately harm individuals living or serving in the military overseas who might not get mail in a timely manner, as well as the elderly and members of minority communities with limited or no internet access. HB 1488 would decrease the level of accountability in rate cases because it would take a greater effort on the part of the regulatory agency to check and ensure that notices had been properly issued. It is much easier to check to see if a newspaper notice has been printed. Ensuring that a gas utility has properly notified customers through mail or e-mail is a much more difficult task.

NOTES:

The Senate unanimously passed the companion bill, SB 885 Hinojosa, passed on March 27, and the House State Affairs Committee reported it favorably on April 17.

SB 885 differs from HB 1488 in that the Senate companion would require a gas utility seeking to provide rate increases notices by e-mail to a customer to do so only if the customer had consented in writing to the use of the e-mail address for that purpose.

SUBJECT: Use of money in the JP court technology fund in Guadalupe County

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Lewis, Farrar, Farney, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson

0 nays

1 absent — Gooden

WITNESSES: For — Bobby Gutierrez, Justice of Peace and Constables Association of Texas; Michael Skrobarcek, Guadalupe County Constable's Office Pct.3; (*Registered, but did not testify:* Carlos Lopez, Justice of the Peace and Constables Association of Texas)

Against — John Dahill, Texas Conference of Urban Counties; Bill Gravell, Texas Justice Court Judges Association

BACKGROUND: Code of Criminal Procedure, art. 102.0173, establishes a justice court technology fund in each county. The fund is to be used for information technology equipment, maintenance, and training in justice courts. The fund is administered by or under the direction of a county's commissioners court.

A defendant convicted of a misdemeanor offense in a justice court must pay a $4 justice court technology fee. The fee is deposited into the county's justice court technology fund.

DIGEST: HB 1448 would allow a justice of the peace court, with the approval of the commissioners court, to use the justice court technology fund to assist constables or another county department with technological enhancements or related costs if the enhancement were related to the operation or efficiency of a justice court.

The bill would apply to a county that had a population of 125,000 or more, was not adjacent to a county of 2 million or more, contained a portion of the Guadalupe River, and contained a portion of Interstate 10 (Guadalupe County).

The bill would take effect on September 1, 2013.

SUPPORTERS SAY:

The use of justice court technology funds would assist constables with technology upgrades that would improve court efficiency. Constables work hand in hand with JPs and their staff so a technology enhancement for constables often improves judicial efficiency in a justice court. Funds would be used for technology upgrades such as computers in vehicles, devices to remotely access the Internet, software purchases, and handheld ticket printers.

Under the bill, the commissioners court still would oversee use of the justice court technology fund. The justice courts would be able to use the fund only with the approval of the commissioners court.

OPPONENTS SAY:

The bill inappropriately would take the financial oversight of the justice court technology fund away from the county commissioners court and turn it over to the justices of the peace. The bill's provision subjecting expenditures to the approval of the commissioners court only would grant them a veto. It would not allow them to directly set the priorities for expenditures from the fund. In Texas county governments, the commissioners court has the power of the purse, with a few limited exceptions. It would be inappropriate to assign control of the justice court technology fund to justice courts because it would further erode the budgeting powers of the commissioners court.

SUBJECT: Regulating pharmacy audits

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Eiland, G. Bonnen, Creighton, Muñoz, Sheets, Taylor, C. Turner

0 nays

1 absent — Morrison

WITNESSES: For — Denise Davis, Prime Therapeutics; Amanda Fields, Texas Pharmacy Business Council; (*Registered, but did not testify:* Audra Conwell, Alliance of Independent Pharmacists of Texas; Duane Galligher and Chris Shields, Texas Independent Pharmacies Association; Michael Harrold, Express Scripts; Allen Horne; David A. Marwitz, Texas Pharmacy Association; Nathan Rawls; Karen Reagan, Walgreen Co.; Brad Shields, Texas Federation of Drug Stores, Texas Society of Health System Pharmacists; Jaime R. Solis; Dennis Wiesner, HEB; Morris Wilkes, United Supermarkets; Mike Wright, Texas Pharmacy Business Council)

Against — None

On — (*Registered, but did not testify:* Debra Diaz-Lara, Texas Department of Insurance)

DIGEST: CSHB 1358 would implement procedures and policies for health benefit plan and pharmacy benefit manager (PBM) audits of pharmacists and pharmacies.

Procedures. The bill would require that health benefit plan issuers and PBMs accommodate a pharmacy's schedule when conducting on-site audits. Unless the auditing entity had reason to suspect a pharmacy of fraud or intentional misrepresentation, it would provide at least 14 days written notice of the audit and include in the notice the claims subject to auditing.

Contracts between pharmacies and auditing entities would be required to include detailed audit procedures, and pharmacies would have to be

notified of any change made to them within 60 days of the change.

CSHB 1358 would require that at the conclusion of an audit, the health plan benefit issuer provide to the pharmacy a summary of its findings and allow the pharmacy to respond. The auditors would have 60 days to submit a preliminary report, followed by a 30-day period in which the pharmacy may challenge any findings. Within 120 days of submitting the preliminary report, the auditors would submit their final report of the audit results, including the amount of recoupments claimed after considering the pharmacy's response.

Pharmacy protections. CSHB 1358 would prohibit unintentional clerical errors from being used as evidence of fraud. They could also not be used as a basis for payment recoupment unless they resulted in actual financial harm to a patient or health plan issuer.

The bill would prohibit on-site auditors from entering the pharmacy area unless escorted by a person authorized by the pharmacist or pharmacy.

Auditing entities would not be allowed to use "extrapolation," the use of a sample of audited claims to estimate results for a larger batch of claims, either in contracts or to determine payment owed.

CSHB 1358 would prohibit auditors from receiving compensation based on the amount recovered as a result of the audit. Audits requiring a pharmacist's professional judgment would require consultation with a licensed pharmacist.

Among other provisions, CSHB 1358 would:

- limit the size to 300 claims if random sampling were used to select claims for the audit;
- give a one-year deadline for health benefit plan issuers and PBMs to complete a claim's audit;
- allowed pharmacies to use legal prescriptions and written delivery records to validate a prescription or prescription delivery; and
- provide audited pharmacies at least 20 days to submit requested documents.

NOTES:

The companion bill, SB 591 by Van de Putte, was passed by the Senate by a vote of 30-0 on April 25.

SUBJECT: Eliminating certain contested case hearings for uranium mining

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 8 ayes — Ritter, Ashby, D. Bonnen, Callegari, Keffer, T. King, Larson, D. Miller

2 nays — Johnson, Lucio

1 absent — Martinez Fischer

WITNESSES: For — Harry Anthony, Uranium Energy Corp.; Hugo Berlanga, Uri Inc.; Jaime Carrillo; Dick Messbarger, Kingsville Economic Development Council; Mark Pelizza, Uranium Resources Inc.; *(Registered, but did not testify:* Leonard Garcia, Uranium Energy Corp.; Craig Holmes, Regulatory Consults; Peter Luthiger, Mestena Uranium LLC; Trey Powers, Texas Mining and Reclamation Association; Craig Wall, Uranium Energy Corp.*)*

Against — Matt Kramer, Kenedy County Groundwater Conservation District; *(Registered, but did not testify:* Myron Hess, National Wildlife Federation; Luke Metzger, Environment Texas; Joann Robison, League of Women Voters; David Weinberg, Texas League of Conservation Voters*)*

On — Charles Maguire, Texas Commission on Environmental Quality

BACKGROUND: Conventional mining involves removing mineralized rock or ore from the ground, breaking it up, and treating it to remove the minerals being sought.

In situ mining involves leaving the ore in the ground and using injection and extraction wells to free and remove uranium in aquifers by dissolving it and pumping the solution to the surface, where the minerals can be recovered. The ore body needs to be permeable to the liquids and located so as not to contaminate groundwater. In situ uranium mining uses the groundwater in the ore body, which is fortified with a complexing agent. It is then pumped through the underground ore body to recover the minerals.

To perform in situ uranium mining, uranium mining companies have to obtain both an area permit and a production area authorization from the

Texas Commission on Environmental Quality (TCEQ) to operate and mine in Texas. An area permit provides initial authorization pertaining to the overall mining activities performed in a specific area. It authorizes injection for uranium recovery for a period of 10 years and is subject to public notice requirements and contested case hearings. Expiration of authority does not relieve the permit holder from obligations to restore groundwater and plug and abandon wells according to TCEQ requirements and rules.

A production area is a separate mining zone within the permit area. Because uranium is not uniform throughout an aquifer, permit areas can have several production zones of varying size, characteristics, and distance from each other. Usually, one production area is authorized in the initial area permit. TCEQ approval is required for each new production area.

Because uranium mining typically lasts for many years, uranium mines must seek a production area authorization to mine additional areas within the initial permit area. Once one production area is mined, operators generally seek an additional authorization from the TCEQ for further mining. Before 2007, each production area authorization was viewed as a major amendment to the initial area permit, requiring a contested case hearing.

In 2007, SB 1604 by Duncan amended statute limiting the requirement for contested case hearings for production area applications only if:

- the proposed expansion changes the groundwater restoration tables licensed under the initial permit;
- there is failure to use a third party to develop the well spacing and design of the mined area; or
- the level of bonding required for cleanup after mining has occurred would change.

DIGEST:

HB 1079 would repeal provisions in the Water Code requiring that an application for the authorization of a production area for uranium mining be subject to public notice and contested hearing requirements.

The bill also would strike the related conditional language for contested case hearings for production area applications for uranium mining.

This bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

Uranium deposits in South Texas are becoming increasingly important as part of the resurging interest in nuclear power production. However, uranium production levels in Texas are affected by the unpredictability created by multiple and duplicative contested case hearings, which result in unnecessary delays and uncertainty for companies operating in the state. Every production phase is subject to a new contested hearing even though a hearing was conducted when the initial permit for the whole mining area was approved. HB 1079 would streamline the permitting process by removing the requirement for a contested case hearing on a production area authorization.

HB 1079 would establish the regulatory certainty uranium mining companies need to expand their operations, make capital investments, and hire additional employees in Texas. In 2007, SB 1604 by Duncan sought to establish regulatory certainty for the approvals of production area authorization. Unfortunately, five years later, the intended regulatory improvements have not yet occurred. The uranium mining industry has given the overhauled regulations sufficient time to bring about change, but it is apparent that further revisions are necessary to create the certainty needed in the TCEQ regulatory processes and to ensure a positive future for the uranium mining industry in Texas.

While some have expressed concern that removing the conditions for a contested case hearing on production area authorizations would limit the ability of local governments and adjacent property owners to protect against contamination, other state and federal regulations protect against this. To ensure the safety of the general public, the environment, and industry workers, all Texas uranium mining operations are regulated by a host of state and federal authorities and must be approved before operations can begin. All projects require an exhaustive permitting process that typically lasts three to five years. Permit applications are closely scrutinized by multiple governmental agencies, including the Texas Commission on Environmental Quality (TCEQ), Railroad Commission of Texas, U.S. Environmental Protection Agency, and the Texas Department of State Health Services. Further, the regulatory structure for the Texas uranium mining industry is transparent and provides numerous opportunities for public participation and contribution.

Texas has established a pro-business environment in many areas. However, opportunities to attract new uranium mining companies can advance only if Texas makes an effort to improve its current regulatory structures. HB 1079 would take the necessary step.

OPPONENTS SAY:

HB 1079 would remove all conditions for a contested case hearing on production area authorizations, effectively stripping the compromise language from SB 1604 by Duncan, which was enacted by the 80th Legislature and limited the requirement for a contested case hearing only in certain circumstances. HB 1079 would undermine citizen rights in uranium-rich South and Southeast Texas. It would prevent local governments and adjacent property owners from bringing in experts to help TCEQ with the necessary scrutiny on critical issues such as the possible contamination of what is often these landowners' and local governments' only source of drinking water. These hearings serve as an important tool for concerned groups to prevent the negative environmental and public health outcomes of mining activities. With renewed interest in mining because of the increased price of uranium, citizens should be assured the right to a contested case hearing.

When conducting in situ uranium mining, dozens of injection and extraction wells are used to free and then remove uranium that is in the aquifers. The mining also releases arsenic, lead, and other metals that are found with the uranium. Uranium mining almost always takes place in the drinking water aquifers used by local landowners and communities for their water supply.

Because uranium is not uniform through the aquifer, but found in small pods, uranium mines have multiple production areas, even dozens. Each production area can be significantly different in size and characteristics. They can be substantial distances apart, even by a few miles. HB 1079 would give a blanket right to produce anywhere in the permit area, without the opportunity to reassess each unique area if necessary.

NOTES:

The companion bill, SB 434 by Hancock, was reported favorably without amendment from the Senate Natural Resources Committee on April 24.

SUBJECT: Revising provisions governing general revenue dedicated funds

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 26 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, S. Davis, Dukes, Giddings, Howard, Hughes, S. King, Longoria, Márquez, McClendon, Muñoz, Orr, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

1 absent — Gonzales

WITNESSES: For — Stephen Minick, Texas Association of Business; Mark Vickery, Waste Management of Texas Inc.(*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition; Doug DuBois, Jr., Texas Food & Fuel Association; John Hawkins, Texas Hospital Association; Joey Park, Coastal Conservation Association Texas and Texas Wildlife Association; Cory Pomeroy, Texas Oil and Gas Association; Michelle Romero, Texas Medical Association; James Willmann, Texas Nurses Association; Mireya Zapata, National Multiple Sclerosis Society)

Against — Robin Schneider, Texas Campaign for the Environment; *(Registered, but did not testify:* Andrew Dobbs, Central Texas Zero Waste Alliance; Tom "Smitty" Smith, Public Citizen)

On — Elizabeth Hendler, Section 185 Working Group and 8- Hour Ozone Coalition; Cyrus Reed, Lone Star Chapter, Sierra Club; Randy Riggs, McLennan County and Heart of Texas Council of Governments; Gk Sprinkle, Texas Ambulance Association; Dinah Welsh, Texas EMS and Trauma & Acute Care Foundation; (*Registered, but did not testify:* David Brymer and Liz Day, Texas Commission on Environmental Quality; Robby DeWitt and Don Galloway, Texas A&M Forest Service; Jeremiah Jarrell, Legislative Budget Board; Maria Lebron, TCEQ; Kelli Merriweather, Commission on State Emergency Communications)

BACKGROUND: General revenue dedicated funds are funds collected for a specific purpose designated in state law. The comptroller estimated general revenue dedicated account balances to be $4.8 billion at the beginning of fiscal

2014-15.

The constitution limits state spending to the amount of revenue the comptroller estimates will be available during the two-year budget period (Art. 3, sec. 49a). The comptroller must certify that the state will have enough revenue to pay for the approved spending.

Under Government Code, sec. 403.095 the comptroller includes in the estimate of funds available for general-purpose spending the amounts in general revenue dedicated accounts expected to exceed appropriations from those accounts at the end of the current biennium.

DIGEST:

HB 7 would modify provisions governing general revenue dedicated funds. The bill would modify fees, eligible uses of funds, procedures, and other provisions.

System Benefit Fund. The bill would reduce the fee that finances the System Benefit Fund to 2 cents per megawatt hour from a maximum of 65 cents per megawatt hour. HB 7l would require the Public Utility Commission to adopt rules providing for reimbursements for authorized uses from System Benefit Fund appropriations. Up to $50 million from the System Benefit Fund could be appropriated to assist low-income electric customers with weatherization and other energy efficiency programs.

The Public Utility Commission would adopt and enforce rules to establish the Low-income Electric Customers Program Fund, which would be funded by a fee of 50 cents per megawatt hour imposed on retail electric customers. The rules would have to provide for the fund to be established outside of the state treasury and any interest earned would be credited to the fund.

Money in the fund would be used as follows:

- Not more than 96 percent would be used to provide a 15 percent reduced rate for low-income households; and
- Note more than 4 percent would be for bill payment assistance for critical care residential customers with incomes not to exceed 400 percent of federal poverty guidelines.

The fee could not be imposed after August 31, 2023. After that date, the PUC would continue the program until the balance of the fund was

exhausted.

Interest transfer. Notwithstanding other laws, all interest and other earnings that accrued on general revenue dedicated funds available for certification would be available for any general governmental purpose and deposited into the General Revenue Fund. The deposit would not apply to certain receipts to be deposited in the state treasury or interest or earnings on deposits of federal money which may not be diverted.

TERP Funds. The bill would modify procedures governing Texas Emissions Reduction Plan (TERP) funds. The comptroller would no longer be required to see that the Texas Department of Motor Vehicles remitted certain funds to the TERP. The Texas Transportation Commission could designate unremitted amounts for eligible congestion mitigation projects or for deposit to the Texas rail relocation fund.

Change in eligible fund use. Money in the trauma facility and emergency medical services account could be appropriated to the Texas Higher Education Coordinating Board for graduate-level medical and nursing education programs.

Wireless telecommunications fees for emergency services could be appropriated to the Texas A&M Forest Service for providing assistance to volunteer fire departments.

Money in the Hazardous and Solid Waste Remediation Fees Account from the sale of batteries could be used for environmental remediation at the site of a closed battery-recycling facility that met certain conditions.

Solid waste disposal fees. The bill would reduce fees for the disposal of solid waste by one quarter. It would increase the percent of solid waste disposal revenue dedicated to various solid waste permitting and enforcement programs to 66.7 percent from 50 percent. There would be a corresponding decrease to local and regional solid waste projects consistent with approved regional plans. The fee would not apply to a composting and mulch-processing facility.

Specialty License Plates. No later than September 30, 2013, the comptroller would eliminate all dedicated accounts established for specialty license plates and set aside the balances of those accounts so they may be appropriated only for intended purposes as provided. The fee for

the dedicated accounts would be paid instead to the credit of an account in a trust fund the comptroller created outside the General Revenue Fund. The comptroller would administer the trust fund and could allocate the principle and interest on the accounts only in accord with the dedications.

LBB recommendations. CSHB 7 would charge the Legislative Budget Board with developing and implementing a process to review new legislative enactments that create dedicated revenue, as well as the appropriation and accumulation of dedicated revenue. The LBB would develop specific and detailed recommendations on actions the legislature could reasonably take to reduce reliance on dedicated revenue for certification. These recommendations would be incorporated into the LBB's budget recommendations.

Other provisions. The bill would modify fees assessed against insurers from $30 million per fiscal year to be set at the amount necessary to collect enough revenue to cover general revenue appropriations from the volunteer fire department assistance fund for that fiscal year.

The bill would add fees collected by the Railroad Commission for the commission of certain letters of determination to the oil and gas regulation cleanup fund. Under the bill, money in the fund could be used for the study and evaluation of surface casing depths necessary to protect usable groundwater.

The bill would create a requirement for the Texas Natural Resource Conservation Commission to prepare an annual report on leaking underground tanks. The report would have to include an investigation of the amount of fees that would be necessary to cover the costs of concluding programs and activities related to the tanks before September 1, 2021.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 7 would take key steps toward reducing reliance on general revenue dedicated funds. Many of these changes either came directly or indirectly from recommendations in a Legislative Budget Board report on how to reduce the reliance on dedicated funds to budget certification.

While the Legislature has not spent dedicated funds for unintended purposes, it has been using these for certification purposes for over two decades. This practice is so deeply ingrained, that unfortunately, it will take multiple sessions to work out completely. The Comptroller recently estimated that there would be about $4.8 billion available in general revenue dedicated funds for fiscal 2014-15. Eliminating this balance through fee cuts, refunds, appropriations, and other measures simply will take time. HB 7 and a related bill, HB 6 by Darby, as well as measures in the House-passed version of SB 1, would together take important steps toward reducing the state's long-term reliance on unspent general revenue dedicated funds.

System Benefit Fund. HB 7 would make key changes to the System Benefit Fund that would ultimately reduce the Legislature's reliance on that fund for certification. The comptroller estimated the balance of the Fund to be about $810 million for fiscal 2014-15. The bill would enact three main measures to reduce reliance on the System Benefit Fund. The bill would:

- create a new low-income electric customer program (LIEC) outside of the treasury and fund it with a 50 cent fee;
- reduce the System Benefit Fund fee of 65 cents to 2 cents for administration, education, and outreach for LIEC; and
- provide a ten-year sunset for the LIEC fee and wind-down provisions for the program.

Moving the LIEC account outside of the treasury would make it ineligible to be counted for certification purposes, thereby removing any incentive to hold future revenue in the account. Reducing the fee amounts to a total estimated fee reduction of $60 million and would slow the accrual of fund balances and ensure that incoming revenue could be spent on the 15 percent discount program.

Change in eligible fund use and other procedures. HB 7 would make changes to the eligible uses of some funds and would modify processes governing others. Increasing the range of eligible uses of general revenue dedicated funds to include other pressing state priorities that are related to the fund's original purpose would enhance opportunities for the Legislature to spend these funds. State priorities change over time, and funding priorities must be flexible enough to change with them. Adding related funding priorities provides this flexibility without clouding the

original purpose to which the legislature dedicated the fund.

For instance, the addition of graduate medical education to the eligible uses of the trauma facility and emergency medical services account permits an expense that is clearly related to the purpose of the account but which now must be funded through general revenue or other means.

Specialty License Plates. The bill would not have a substantive impact on specialty license plate funds but would, at long last, free them to be spent on their intended purposes. Moving the specialty license plate funds outside of the treasury would eliminate more than 30 general revenue dedicated accounts and prevent the balances from being used for certification. This would remove all obstacles to spending these funds for their intended purpose.

OPPONENTS SAY:

HB 7 would modify the purposes for which some key funds may be spent and would make potentially detrimental changes in some processes for others. Expanding the permissible purposes for which funds may be spent can be problematic when there are still significant unmet needs associated with those original purposes. For example, adding graduate medical education to the permissible uses of the trauma and EMS account could divert funds from the pressing needs that the account was originally set up to address. The Legislature should satisfy existing pressing needs before expanding the eligible appropriations from these funds.

In addition, HB 7 would remove the requirement that certain funds transferred to the Texas Mobility Fund must be transferred back in corresponding value to the TERP. If the transfers were not made, as would be possible under the bill, the state could lose valuable funds for emissions reduction programs.

OTHER OPPONENTS SAY:

HB 7 would take some steps in the right direction, but also would perpetuate problems with the general revenue dedicated account with the largest unspent balance, the System Benefit Fund.

There is widespread agreement that under-appropriating from general revenue dedicated funds to preserve enough unspent revenue to certify the budget amounts to raising revenue for one purpose and diverting the funds to another purpose. As many have noted, honesty and transparency in budgeting call for spending funds on the purpose for which they were collected; if the state is not willing to spend the account balances, then it

should be willing to refund the money to taxpayers.

HB 7, in effect, would prolong the System Benefit Fund for 10 years in the form of the low-income electric customer program. The System Benefit Fund, being the fund with the highest unspent balance, presents the biggest test to the Legislature to prove its resolve in addressing the general revenue dedicated diversion problem. The Legislature has had ample opportunity to spend these funds for their original purpose, and yet it has chosen not to do so. As such, the funds should be discontinued or leveled to match appropriations and the balance should be refunded to the ratepayers who have been paying the fee.

Moving the low income electric customer fund outside of the treasury would be an unusual move and could create a troubling precedent.

NOTES:

The Legislative Budget Board released a publication in January 2013 that includes recommendations on measures the Legislature could take to reduce reliance on general revenue dedicated accounts.

A related bill, HB 6 by Otto, would place a cap of $4.8 billion on the general revenue dedicated funds that could be counted toward the state's budget certification. The bill is also scheduled for second reading consideration today.

The committee substitute for HB 7 added provisions governing the System Benefit Fund and creating the low-income electric customer program. The substitute also added, among others: provisions governing specialty license plates, transfers to the TERP, reports on leaking underground storage tanks.

SUBJECT: Requiring public universities to offer a four-year fixed tuition price plan

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Branch, Patrick, Alonzo, Clardy, Darby, Howard, Murphy, Raney

0 nays

1 absent — Martinez

WITNESSES: For — (*Registered, but did not testify:* Justin Yancy (Texas Business Leadership Council)

Against — None

On — David Daniel, University of Texas at Dallas; Diana Natalicio, University of Texas at El Paso; (*Registered, but did not testify:* Dan Weaver, Texas Higher Education Coordinating Board)

DIGEST: HB 29 would require public higher education institutions to offer a four-year fixed tuition price plan. The fixed-tuition plan would be offered to undergraduate students, including transfer students.

HB 29 would require fixed-tuition plans to provide that tuition charged to an undergraduate in the plan would not exceed that charged during the student's first academic term. In the fifth academic year following the student's initial enrollment, the institution would not be able to charge tuition that exceeded the amount that would have been charged to the student in his or her second year, had they not been on a fixed tuition plan.

A fixed tuition plan would not apply after a student had been awarded a baccalaureate degree by the institution.

If the institution offered multiple tuition price plans, then it would have to require entering undergraduate students to accept or reject the plan before the student enrolled. Universities would notify each entering undergraduate student of the fixed-tuition plan.

Fees charged by an institution to a student in a fixed-tuition plan would not be more than the fees charged to a similarly situated student not in a fixed-tuition plan. Students would be similarly situated if they shared the same residency status, degree program, course load, course level, and other applicable circumstances.

The bill would require institutions to adopt rules to administer the program. It would not require universities to offer a variable-tuition price plan.

The bill would not apply to students who entered an institution for the first time before the 2014 fall semester. This restraint would expire on January 1, 2020.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 29 would provide parents and students with price certainty, which would allow them more easily to determine whether they could afford the tuition of a particular institution. They also would be able to make better informed decisions about the true value of financial aid, scholarships, and other offers knowing their actual value over the next four years.

Price certainty for a bachelor's degree would be similar to other major purchases for which a buyer knew what the payments would be. Families need to know what they will spend on a mortgage or car payment in order to properly budget. They should know the same for college tuition.

Price certainty could allow students to spend less money on a college degree because they would be insulated from unpredictable and sharp tuition price increases.

HB 29 would encourage on-time graduation by framing a university education as a four-year experience. The University of Texas at Dallas saw a significant increase in on-time graduation after the school switched to offering only a four-year fixed price tuition plan to students. Texas should foster on-time graduation because it saves formula funding tax dollars, helps the economy as newly minted graduates transition into the workforce, and opens up space for incoming students.

Institutions would have some flexibility in how they offered the program. The bill would allow them to set their own administrative rules. This would allow them to tailor their fixed-tuition plans to minimize administrative burden and ensure they were competitively priced to meet the needs of their student population.

OPPONENTS SAY:

Four-year fixed tuition price plans would end up being a financial drain on many institutions and prove unpopular among students who struggled to meet short-term tuition costs.

For example, the University of Texas at El Paso, which offers a fixed-tuition plan, has signed up only a handful of students. This undoubtedly is because fixed-tuition plans, while they lock in the price a student would pay for four years at an institution, are designed to average costs and offer a higher rate the first two years than that charged a student who pays semester by semester. This makes the plans less attractive to financially needy students who struggle to pay immediate tuition and other costs.

Dedicating administrative time and resources to calculating, marketing, and tracking acceptance and rejection of plan offers would be a financial drain at schools where few students sign up.

The Legislature should be careful when adding additional mandates on the schools at a time when it is paramount to control rising costs.

NOTES:

The committee substitute differs from the bill as filed in that it would require students to accept or reject the four-year fixed tuition price plan and would include rules about fees that could be charged to students on the plan. The bill as filed would have allowed a student who had previously completed a baccalaureate to be considered an entering undergraduate student for purposes of a fixed tuition plan if the student later enrolled in a different undergraduate degree plan and would have required the Texas Higher Education Coordinating Board to create rules to administer fixed-tuition plans.

SUBJECT: Extending, changing controlled substance registration for physicians

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

WITNESSES: For — Richard Benedikt and Dan Finch, Texas Medical Association; (*Registered, but did not testify*: Jennifer Banda, Texas Hospital Association; Trish Conradt, Coalition for Nurses in Advanced Practice; Thomas Kleinworth, Baylor College of Medicine)

Against — None

On — RenEarl Bowie, Texas Department of Public Safety; Mari Robinson, Texas Medical Board

BACKGROUND: Health and Safety Code, ch. 481, is the Texas Controlled Substances Act. It defines "director" as the director of the Department of Public Safety (DPS). It requires a controlled substances registration (CSR) permit to manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance, and mandates a CSR permit be renewed annually with DPS. It specifies who is eligible for a CSR permit and when an applicant must be denied a permit.

Occupations Code, Title 3, subtitle B is the Medical Practice Act. It defines "physician" as a person licensed to practice medicine in this state and "board" as the Texas Medical Board. Occupations Code, ch. 156, requires that a physician register every two years with the board.

DIGEST: CSHB 1803 would require that a physician's CSR permit be valid for at least two years and expire on the same date as the physician's registration permit issued by the Texas Medical Board. The DPS director could not require a licensed physician to maintain a separate CSR permit.

Permit renewal. The board would need to synchronize the renewal of a

physician's CSR permit with his or her physician registration permit, so that registration dates, payments, notices, and applicable grace periods were the same and minimized administrative burdens to the board and physicians.

A physician meeting all eligibility requirements could renew his or her CSR permit with the board by providing the necessary information and fee, and the board would have to allow the physician to do this electronically. The board would have to accept CSR permit renewal applications and fees from licensed physicians and by rule adopt a procedure for submitting these applications and fees to DPS. The DPS director could charge up to a $50 nonrefundable registration fee and a late fee for applications submitted after the 30-day grace period. The DPS director would have to adopt rules to implement these registration procedures and coordinate with the board to avoid rule conflicts and minimize the administrative burden to physicians.

Renewal notices. At least 60 days before a physician's registration permit expires, the board would have to send renewal notices for both CSR and physician registration permits. The DPS would still be required to send a CSR permit expiration notices to physicians until January 1, 2016. After that date, the DPS director would not be required to send an expiration notice to a physician already receiving a notice from the board.

Effective dates. If a physician's CSR permit was valid on January 1, 2014, it would expire on the same date as the physician's registration permit.
The bill would also include a temporary provision, set to expire on January 1, 2017, stating that a CSR permit in effect on January 1, 2014 would not expire before a physician's registration permit. This bill would only apply to physician CSR permits that expire on or after the effective date.

This bill would take effect January 1, 2014.

SUPPORTERS SAY:

CSHB 1803 would streamline the CSR permit process for physicians. Currently, physicians must register with DPS for their CSR permit and the Texas Medical Board for their physician registration permit. These permits are valid for different lengths of time and may expire on different dates. This creates confusion and occasionally results in lapsed CSR permits, preventing a physician from prescribing many medications. This can

substantially disrupt a physician's practice and interfere with patient care. By establishing a single permit renewal process under the board, CSHB 1803 would create a simple, efficient system for physicians and state agencies, while reducing disruptions to patient care.

By limiting the CSR permit renewal extension to physicians, CSHB 1803 would allow the DPS to address any logistical issues before expanding the two-year renewal process to all permit-holders.

OPPONENTS SAY:

CSHB 1803 would allow physicians to renew their CSR permits every two years, while still requiring annual renewal for other permit holders. To promote uniformity, this bill should allow all CSR permits to be renewed every two years.

NOTES:

Compared to the introduced bill, the committee substitute would:

- specify that a CSR permit was valid for at least two years and, after the effective date, a CSR permit did not expire before a physician registration permit;
- require DPS to continue sending renewal notices to physicians until January 1, 2016;
- allow DPS to charge up to a $50 nonrefundable registration fee and a late fee;
- requires the board accept electronic CSR permit renewal applications;
- require the board to synchronize the renewal of a physician's CSR permit with their physician registration permit;
- require the board send a renewal notice 60 days before a physician registration permit expired;
- require the DPS director to coordinate with the board to avoid rule conflicts and reduce administrative burdens on physicians; and
- make conforming amendments.

The Legislative Budget Board estimates that CSHB 1803 would have no net fiscal impact to the state. While one-time computer programming needs at the board are projected to cost the state $126,000 in general revenue funds in fiscal 2014, this expense would be offset by revenue from registration and late fees.

SUBJECT: Reporting to comptroller on financial interest in coin-operated machines

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Price

0 nays

2 absent — Miles, S. Thompson

WITNESSES: For — None

Against — (*Registered, but did not testify:* Lee Woods, Amusement and Music Operators of Texas)

On — Rob Kohler, Texas Baptist Christian Life Commission

BACKGROUND: Under Occupations Code, ch. 2153.151, manufacturers, owners, buyers and others associated with music, skill, or pleasure coin-operated machines must hold a license or registration certificate issued by the comptroller. Under sec. 2153.202, license holders must maintain a record of and report to the comptroller certain information about each music, skill, or pleasure coin-operated machine owned, possessed, or controlled by the license holder, including the make and serial number of each machine, the location of the machine, and any change in machine ownership.

It is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) to intentionally fail or refuse to report required information to the comptroller and to withhold or conceal information required to be reported from a person designated as responsible for reporting the information.

Penal Code sec. 47.03 makes gambling promotion a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000). Included in the criminal activities listed in this section are operating or participating in the earnings of a gambling place, engaging in bookmaking, taking bets or placing odds on games or political contests, and setting up or promoting a

lottery.

Penal Code, sec. 71.02 makes engaging in organized criminal activity a crime. The offense consists of committing one or more of the crimes or types of crimes listed in the section with the intent to establish, maintain, or participate in a criminal combination or its profits or as a member of a criminal street gang. One of the types of crimes on the list is any gambling offense punishable as a class A misdemeanor.

DIGEST:

HB 137 would require holders of licenses for music, skill, or pleasure coin-operated machines to submit to the comptroller, along with the information that is currently required, the name and address of the machine owner and the name and address of anyone other than the owner who had a financial interest in the proceeds of the machine. As an exception to this requirement, corporate license holders would not be required to maintain a record of or report the name and address of a shareholder who held less than 10 percent of the shares in the license holder's corporation.

The bill would increase the penalty for failing or refusing to report required information to the comptroller from a class B misdemeanor to a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000)

HB 137 would increase the penalty for gambling promotion from a class A misdemeanor to a state jail felony (180 days to two years in a state jail and an optional fine of up to $10,000).

The bill would expand the definition of crimes considered part of the offense of engaging in organized criminal activity to include felony gambling offenses.

The bill would take effect September 1, 2013, and would apply to offenses committed on or after that date and to records maintained or reported on or after that date.

SUPPORTERS SAY:

HB 137 would increase the accountability of persons involved with coin operated machines in Texas, some of which may be illegal gambling machines.

Current law requires owners and others involved in coin-operated

machines to obtain a license or registration from the comptroller and to report to the comptroller certain information about the machine. However, the report does not include information about everyone who might have a financial interest in the machine. This makes it difficult for law enforcement authorities to determine who should be held responsible if the machine is illegal or an establishment is shut down for a gambling offense.

HB 137 would address this problem by expanding the information that must be submitted as part of the licensing process to include the names and addresses of those with financial interests in the machines' proceeds. This would allow enforcement authorities to cast a net big enough to capture those involved with illegal gambling. The bill would make a reasonable exception for corporate license holders so that reports would not have to include information about shareholders with minimal interests in the machines, and most likely minimal knowledge about them.

Increasing the penalty for failing to make the required report would encourage better compliance and deter persons from withholding information. The penalty would remain a misdemeanor, the appropriate level for this type of offense.

HB 137 also would increase the penalty for gambling promotion to reflect the seriousness of this crime and better deter it. The current class A penalty is a mere slap on the wrist for many illegal machine operators, who view it as no more than the cost of doing business. The class of state jail-felony offense was developed for nonviolent but serious offenses, making it a good fit for the punishment of gambling promotion.

Adding all felony gambling offenses to the list of those contributing to the crime of organized criminal activity would be a natural extension of current law, which makes class A misdemeanor gambling offenses part of that crime. It would give law enforcement officers another tool to go after those who conduct illegal gambling.

OPPONENTS SAY:

Current law properly punishes failing or refusing to report required information to the comptroller and gambling promotion offenses, and the penalties should not be increased.

It would be unfair to increase penalties on Texas bar, tavern, or other business owners with legal amusement machines who are trying to meet reporting requirements. Current law allows for up to six months in jail and

a fine of up to $2,000, which are appropriate given the low-level, non-violent nature of reporting violations. More jail time and higher fines would be out of line with the seriousness of this offense.

Enhancing the penalty for gambling promotion — especially from a misdemeanor to a felony — would be an inappropriate leap in punishment, especially given the gray areas in current law relating to gaming machines. Overzealous law enforcement authorities may go after an establishment or owners of legal machines, thinking the machines are illegal because of different interpretations of the current law. In these cases, a felony punishment would be too harsh and not a good use of state resources, which should be reserved to deal with other types of crimes.

OTHER OPPONENTS SAY:

HB 137 should not carve out an exception so that information about certain shareholders of corporate licensees would not have to be reported to the comptroller. It is important to know about everyone with a financial interest in these machines.

SUBJECT: Creating an opt-out immunization registry, replacing the opt-in system

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Kolkhorst, Naishtat, Coleman, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield

2 nays — Laubenberg, Zedler

WITNESSES: For — Georgia Armstrong, Peoples Community Clinic; Ari Brown, Texas Medical Association, Texas Pediatric Society; Anna C. Dragsbaek, The Immunization Partnership; Patsy Schanbaum, The JAMIE Group; (*Registered, but did not testify*: Keveney Avila, Children at Risk; Nora Belcher, Texas e-health Alliance; Miryam Bujanda, Methodist Healthcare Ministries; Teresa Devine, Blue Cross and Blue Shield of Texas; Marisa Finley, Scott & White Center for Healthcare Policy; Karen Johnson, United Ways of Texas; Marshall Kenderdine, Texas Academy of Family Physicians; Carrie Kroll, Texas Hospital Association; Shannon Lucas, March of Dimes; Mary Nava, Bexar County Medical Society; Carlos Rivera, Austin/Travis County Health & Human Services Department; Rebekah Schroeder, Texas Children's Hospital; Bryan Sperry, Children's Hospital Association of Texas; James Willmann, Texas Nurses Association)

Against — Read King; (*Registered, but did not testify*: Jeremy Blosser; Ben Snodgrass, Texas Home School Coalition)

On — Kevin Allen and Saroj Rai, Department of State Health Services

BACKGROUND: Health and Safety Code, ch. 161, governs immunizations and directs the Department of State Health Services to maintain an immunization registry. It is an opt-in system that requires consent from an individual or the individual's legally authorized representative.

Consent required (opt-in). An individual or representative must provide written or electronic consent before an individual's information is included in the immunization registry, and the executive commissioner of the Health and Human Services Commission must establish consent procedures. Consent only needs to be given once until an individual turns

18. Unless consent to remain in the registry is obtained, the department must remove an individual's information when an individual turns 18 or following a disaster or emergency in which immunizations are given. If consent is withdrawn, the department must remove the information.

Notice and exclusion. The first time the department receives information about an individual that has consented to the registry, the department must send a notice explaining the registry. If the department discovers that consent has not been granted or has been withdrawn, the individual's immunization information must be excluded from the registry.

Immunization data. If the department receives immunization data from an insurance company, other payors, health-care providers, public health districts, or local health departments, the department must verify consent before including information in the registry and may not retain individually identifiable information if consent is not verified. If consent cannot be verified, the department must direct the health-care providers to obtain consent and resubmit the data.

After an emergency or disaster, the commissioner must by rule determine how long the information remains in the registry. The department must report to the legislature any complaints about failing to remove information after an emergency or disaster.

Confidentiality. With a few exceptions related to an emergency or disaster, registry information that identifies individuals is confidential and can be used by the department only for registry purposes.

DIGEST:

CSHB 772 would require an individual or legally authorized representative to opt-out, rather than opt-in, to the immunization registry.

Request for removal (opt-out). The bill would require the executive commissioner of the Health and Human Services Commission to develop rules allowing an individual or representative to request removal of the individual's information. The commissioner would have to provide opportunities for the individual or representative to request removal:

- whenever a health-care provider administered an immunization in Texas, including at the individual's birth;
- through the DSHS website;
- through a written request to DSHS; and

- following a natural or man-made disaster.

The procedures for requesting removal would have to be included on every immunization record generated by the registry. The department, upon request, would need to provide information about requesting removal from the registry. After an individual turned 18, the individual or representative could submit a written or electronic request for removal.

Unless the individual or representative had requested removal, the registry would have to contain an immunization history for any individual about whom information had been received. If the department received a request for removal, it would be required to remove the information.

The department's website would need to have a printable form stating that individual's information would be included in the registry unless removal was requested and detailing removal procedures. This form would need to be available for distribution to health-care providers and could be used to provide the necessary notification to individuals.

Notice and exclusion. The first time the department received information about an individual, the department would have to send a notice explaining the registry. The department would have to remove information about any individual who had requested exclusion from the registry.

Immunization data. A health-care provider who administers immunizations and provides the department with the data would have to notify an individual or the individual's representative that the individual's immunization information would be included in the registry unless removal was requested and inform them of removal procedures.

The registry data could not be used to exclude an individual from any service during a natural or man-made disaster, unless the service was medically contraindicated. The department could not sell registry data to any public or private entity.

Confidentiality. With approval from the department's institutional review board, the registry information could be used for internal public health research. Registry information could be released for external public health research only if written authorization from individuals or representatives was obtained, individually identifiable information was not disclosed, and the release was approved by the department's institutional review board.

The department's institutional review board could not approve any proposal not requiring researchers to obtain informed consent before the release of an individual's information.

Public awareness. The department would have to develop educational information for health-care providers about the option to request removal from the immunization registry. The department would have to conduct a public awareness to educate health-care providers, parents, payors, schools and the public about changes to the registry.

Conforming changes. CSHB 772 would make additional conforming changes that would require an individual to request removal from the registry. It would remove requirements that the commissioner develop consent procedures and determine how long information remained in the registry after an emergency or disaster. The department would not need to report to Legislature any complaints about failing to remove information after an emergency or disaster.

Effective dates. The changes to the immunization registry would apply to information received by the department before, on, or after January 1, 2015. The changes would apply to immunization information included in the registry immediately before January 1, 2015.

The bill would take effect January 1, 2015, except the provision requiring the department to conduct a public awareness campaign would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 772 would modernize the state immunization registry. An opt-out system would increase efficiency, reduce costs, and enhance privacy protections. An immunization registry with more information would ensure more comprehensive care, improve patient outcomes, and prevent duplicative immunizations.

Increases efficiency. The current immunization registry system is cumbersome and inefficient. Ninety-five percent of Texans consent to have their immunization information included in ImmTrac, the state immunization registry. Currently, the department must obtain consent forms for all these individuals. By creating an opt-out system, the department would only need to obtain removal request forms for the 5 percent of individuals who wish to be excluded. This would streamline the registry process and significantly reduce administrative burdens.

Reduces costs. The current opt-in system is outdated and expensive. According to one estimate, an opt-out system would decrease operating costs from $2.64 per child to 29 cents per child. A modernized system also would save money by harmonizing the process with other public health databases and preventing the duplication of expensive immunizations.

Protects privacy. This bill would enhance data protection by specifying the purposes for which immunization information could not be used and involving the department's institution review board for any research project involving the data. It also would prevent individuals who had opted-out of the registry from receiving immunization reminders, further protecting their privacy.

OPPONENTS SAY:

CSHB 772 would be unnecessary because the current system is adequate. The opt-in process captures nearly all Texans, so there is no need to create a new system. Moreover, an opt-out system would be difficult to explain to patients and would create more work for health-care providers.

This bill would change the default immunization position, putting an additional burden on individuals who wanted to be excluded from the registry. This would create the possibility that an individual who wished to be excluded from the registry could be included without his or her knowledge.

This bill would allow the department and external entities to use immunization data for research projects, creating concerns about privacy and the protection of personal information.

NOTES:

Compared to the introduced bill, the committee substitute would:

- direct the commissioner to develop guidelines to provide specific opportunities to request removal of information;
- require the procedure for requesting removal from the registry to be included on each immunization record generated by the registry system;
- require a health-care provider to notify an individual or representative that the immunization information will be included in the registry unless removal is requested and provide the procedures for requesting removal;
- require the department's website to have a printable form with

registry information and removal procedures that could be used by providers;

- require the department, upon request, to provide information to an individual on removal procedures; and
- add schools and payors to the list of entities to be involved in the department's public awareness campaign.

The companion bill, SB 40 by Zaffirini, was referred to Senate Health and Human Services Committee on January 28.

SUBJECT: Eligibility of municipalities for courthouse preservation program

COMMITTEE: Culture, Recreation and Tourism — committee substitute recommended

VOTE: 7 ayes — Guillen, Dukes, Aycock, Kuempel, Larson, Nevárez, Smith

0 nays

WITNESSES: For — Guillermo Ramirez, City of Hidalgo; (*Registered, but did not testify:* Gustavo Sanchez and Joe Vera, City of Hidalgo)

Against — none

On — Sharon Fleming, Texas Historical Commission

BACKGROUND: Government Code, secs. 442.0081, 442.0082, and 442.0083 relate to the designation of a historically significant courthouse and the administration of historic courthouse preservation and maintenance programs by the Historical Commission. A single grant may not exceed the greater of $6 million or 2 percent of the amount appropriated for the historic courthouse preservation program.

DIGEST: CSHB 3674 would include in the definition of "historic courthouse" a municipally owned structure that previously functioned as the official county courthouse. The bill also would make conforming changes to the Government Code to reflect this changed definition, specifying that a historic courthouse eligible for preservation funding could be owned by either a county or a municipality.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: The Texas Historic Courthouse Preservation Program has a record of success throughout the state, generating nearly 10,000 jobs, $367 million in gross state product, and a combined $43.5 million in local and state taxes since its inception in 1999. The program stimulates local economies and serves local communities by generating jobs, providing a site for

community events, increasing local property values, attracting tourism and film projects, and giving local citizens tangible connection to the past. Allowing municipalities to apply for this funding would level the playing field for local government entities seeking to preserve historic buildings that once served as courthouses.

Roughly five buildings would become eligible for funding from this program, all of which previously served as county courthouses and are more than 100 years old. The historical value of these municipally owned courthouses is the same as courthouses owned by counties, and they should receive the same opportunities for protection and preservation.

Allowing municipally owned courthouses access to the courthouse preservation program would not burden the fund's resources. Very few courthouses would be added to the list of eligible buildings, and the estimated cost of renovating some of these buildings would be much lower than the average cost to renovate a county-owned courthouse. For example, the City of Hidalgo has already raised $1 million from the local community to renovate its city-owned courthouse, but would seek $1 million in needed funds from the courthouse preservation fund. This is less than the average request from the program of $3 million to $4 million.

Multiple buildings within a single county may already qualify for restoration and preservation funding because some counties own more than one historic courthouse. Previous legislation capped grants for a single county at $6 million or 2 percent of the amount appropriated for the historic courthouse preservation program to ensure that counties did not receive more than their fair share.

OPPONENTS SAY:

The bill would expand the number of courthouses eligible for help from the courthouse preservation program, which does not have the capacity to fund current projects, let alone new applications from municipally owned courthouses. In the 2012-13 biennium, counties requested $130 million, and only $20 million was appropriated by the Legislature. The fund's account has $1.6 million remaining.

This bill also unfairly would allow counties to double-dip by receiving grant funding from the Historical Commission for two separate courthouses in a single county.

NOTES:

The committee substitute differs from the bill as filed by expanding the

definition of "historic courthouse" to include a courthouse that previously functioned as an official county courthouse and was owned by a municipality and making conforming changes.

The House committee substitute of SB 1 would appropriate $10.9 million for the courthouse preservation program in fiscal 2014-2015. The Senate has identified $20 million for the courthouse preservation fund as a priority if additional funding becomes available.

SUBJECT: Creating an extension center of the Texas State Technical College System

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 23 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Darby, S. Davis, Dukes, Giddings, Howard, Hughes, S. King, Márquez, McClendon, Muñoz, Orr, Otto, Patrick, Price, Raney, Ratliff, Zerwas

0 nays

4 absent — Crownover, Gonzales, Longoria, Perry

WITNESSES: For — None

Against — (*Registered, but did not testify:* Chris Cornell, Reece Albert, Inc.)

On — Mike Reeser, Texas State Technical College System; (*Registered, but did not testify:* Gary Hendricks, Texas State Technical College System)

BACKGROUND: Education Code, sec. 135.02(a) establishes the constituent parts of the Texas State Technical College System. The system office is located in Waco. Campuses are located in Harlingen, Marshall, and Waco. A West Texas campus is distributed between Abilene, Breckenridge, Brownwood, and Sweetwater.

DIGEST: HB 3640 would add an extension center in Ellis County to the Texas State Technical College System.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: HB 3640 would help Ellis County meet the needs of its rapidly growing population and business community for post-secondary educational opportunities. The new Texas State Technical College (TSTC) extension center in Ellis County would serve the citizens of Ellis and surrounding

counties just south of Dallas-Fort Worth. It would develop and offer highly specialized technical programs with related supportive coursework, placing primary consideration on the industrial and technological vocational needs of the region and the state.

Ellis County is a suitable location for the extension because it already is home to Navarro Junior College, a Multi-Institutional Teaching Center, and the Southwestern Assemblies of God campus. The new extension center would provide more expansive and technical options for students seeking post-secondary education. The emphasis of the proposed TSTC extension center in Ellis County would be on advanced or emerging technical programs not commonly offered at public junior colleges.

OPPONENTS SAY:

According to the fiscal note, the bill would cost the state $10.8 million in general revenue over the next biennium. The state must be unusually careful when making large on-going financial commitments that have may only regional impact.

NOTES:

According to the Legislative Budget Board, HB 3640 would have a negative impact of about $10.8 million to general revenue related funds in fiscal 2014-15 due to the cost of employee benefits, formula funding, tuition revenue bond debt service, and special items required to establish and operate the extension center.

SUBJECT: Extending statewide a program allowing appraised value appeals to SOAH

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 6 ayes — Hilderbran, Otto, Bohac, Button, N. Gonzalez, Ritter

0 nays

3 absent — Eiland, Martinez Fischer, Strama

WITNESSES: For — George Allen, Texas Apartment Association; John Kennedy, Texas Taxpayers and Research Association; James Popp, Popp Hutcheson; Jim Robinson, Texas Association of Appraisal Districts Legislative Committee; John Valenta, Texas Oil and Gas Association; (*Registered, but did not testify:* Adrian Acevedo, Anadarko Petroleum Corp.; Rodrigo Carreon; George Christian, Texas Taxpayers and Research Association; Brent Connett, Texas Conservative Coalition; Marya Crigler, Texas Association of Appraisal Districts Legislative Committee, Travis Central Appraisal District; June Deadrick, CenterPoint Energy; Stephanie Gibson, Texas Retailers Association; Daniel Gonzalez, Texas Association of Realtors; James LeBas, TxOGA; Ned Munoz, Texas Association of Builders; Ronnie Volkening, Texas Retailers Association)

Against — None

BACKGROUND: In 2009, the 81st Legislature enacted HB 3612, by Otto, which created a pilot program to allow taxpayer appeals of appraisal review board (ARB) decisions involving property values of more than $1 million in certain counties to be heard by the State Office of Administrative Hearings (SOAH). The pilot program covered Bexar, Cameron, Dallas, El Paso, Harris, Tarrant, and Travis counties. The pilot is set to expire in 2013.

In 2011, the 82nd Legislature enacted HB 2203, by Otto, to extend the pilot program to include Collin, Denton, Fort Bend, Montgomery, and Nueces counties for a one-year period beginning with the ad valorem tax year that began January 1, 2012.

DIGEST: CSHB 316 would extend and make permanent the pilot program allowing SOAH to hear appeals of ARB decisions statewide. It would add minerals

to the types of real property ARB decisions that could be appealed to SOAH.

The bill would require SOAH to hear appeals only in the following municipalities: Amarillo, Austin, Beaumont, Corpus Christi, El Paso, Fort Worth, Houston, Lubbock, Lufkin, McAllen, Midland, San Antonio, Tyler, and Wichita Falls. If all or part of the property that was the subject of the appeal was located in one of these cities, then the appeal would be heard in that city. If none of property was in one of these cities, then SOAH would hold the hearing in the city closest to the subject property.

The bill would take effect January 1, 2014, and would apply only to appeals filed on or after that date.

SUPPORTERS SAY:

CSHB 316 would extend across Texas the successful pilot program that allows taxpayers to appeal ARB determinations to SOAH. The appeal to SOAH has proven to be a valuable intermediate option between ARB decisions and an appeal to district court. Too many taxpayers are unhappy with the ARB process but cannot afford to appeal their cases to district court, as the cost of doing so often exceeds the shift in appraised value they hope to obtain. The ability to appeal ARB decisions to SOAH has proven popular within the counties where it has been allowed and its success and benefits should be offered to all Texas property tax payers.

Appeals to SOAH increase the number of settlements between parties. It is fine that few of the appeals to SOAH actually make it all the way to the point of an issued ruling by an administrative law judge because the pilot program encourages taxpayers and appraisers to settle on a value. This results in faster resolution of cases, saving the parties money and giving local tax collecting entities a better sense of their tax base earlier in the property tax cycle.

Appeals to SOAH do not violate the open courts provision of the Texas Constitution. Administrative law judges at SOAH use adequate process and evidentiary protections to ensure the case has been heard and ruled upon by a judicial process that adequately protects the interests and rights of all parties. A hearing before a SOAH judge is not comparable to binding arbitration, which is informal enough that it cannot be considered a judicial process. Further, the program is established and has been around long enough that if it were a violation of the open courts provision, it already would have been challenged in court.

OPPONENTS SAY:

The pilot program has not proven popular enough to justify expansion. Not many cases actually reach a final result in SOAH hearings, showing it is underutilized and may not be worth SOAH's time.

The program should not be expanded because it is a possible violation of the open courts provision of the Texas Constitution. Under the program, the taxpayer can unilaterally appeal to SOAH and the result would be binding, with no appeal to the district court. Past court decisions have invalidated similar unilateral programs, such as binding arbitration, as a violation of the open courts provision.

NOTES:

The committee substitute differs from the bill as filed in that it would add minerals to the types of real property ARB decisions that could be appealed to SOAH.